

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: AUGUSTO TENMATAY ABAD, M.D.

**ORDER OF REVOCATION OF LICENSE
TO PRACTICE MEDICINE AND SURGERY**

1. Augusto Tenmatay Abad, M.D. ("Dr. Abad") holds a license to practice medicine in the State of West Virginia, Number 17537, issued originally in 1993. Dr. Abad's address of record with the West Virginia Board of Medicine ("Board") is in South Williamson, Kentucky.

2. On February 26, 2010, in the United States District Court, Southern District of West Virginia, at Charleston, Dr. Abad entered a plea of guilty to a two (2) count Information in United States of America v. Augusto T. Abad, Criminal No. 2:10-00024. He entered a plea of guilty to 21 U.S.C. § 846, conspiracy to misuse his Drug Enforcement Administration (DEA) number to distribute controlled substances (in violation of 21 U.S.C. § 843 (a)(2)) and to 18 U.S.C. § 1347 and 2, aiding and abetting health care fraud. The Court accepted the guilty pleas, finding there was a basis in fact for the pleas. (Ex. 1, Transcript of Proceedings Before the Honorable John T. Copenhaver, Jr., United States District Judge, United States of America v. Augusto T. Abad, Criminal No. 2: 10-00024, February 26, 2010, incorporated by reference herein, p. 52.)

3. Dr. Abad was questioned at the hearing by the Honorable John T. Copenhaver, Jr., and Dr. Abad agreed that while he was working with nurse practitioners at the Justice Medical Clinic (JMC), located between Kermit and

Crum, West Virginia, from the summer of 2008 through March 2009, he allowed three (3) nurse practitioners at JMC to use his DEA number so that they were acting on their own in the course of the distribution of and for the purpose of acquiring, among other things, hydrocodone, alprazolam, and phentermine, all controlled substances. He acknowledged that he understood this to be illegal. (Exhibit 1, pp.38-41, 43-44.)

4. Dr. Abad acknowledged at the hearing as well that JMC catered to a very large number of people who were seeking controlled substances, especially hydrocodone and alprazolam in combination, which are commonly used and abused on the streets, especially for the heightened effect that combination produces and huge numbers of those who came to JMC received those drugs. (Exhibit 1, pp. 50-51.)

5. A certified copy of the Guilty Plea filed on February 26, 2010, in the case United States of America v. Augusto T. Abad, M.D., in Criminal Action No. 2: 10-00024, with a nine (9) page letter of January 19, 2010, signed by the parties, and a four (4) page Information ("Plea Agreement Exhibit A") and an eight (8) page Stipulation of Facts ("Plea Agreement Exhibit B") are incorporated by reference herein as Exhibit 2.

6. Dr. Abad agreed at the hearing that the facts in the Stipulation of Facts were the facts and he approved the Stipulation of Facts. (Exhibit 1, pp. 21-22, 28.)

7. The Stipulation of Facts include that Dr. Abad's role with JMC was to review and co-sign JMC's computerized patient charts from his home in

Charleston, West Virginia, after the patients were seen by nurse practitioners, that he agreed that nurse practitioners who routinely saw patients could use his DEA number to issue controlled substance prescriptions for a longer period than the nurse practitioners were allowed. Further, he knew or should have known that this was illegal, and he co-signed patient charts sometimes without reviewing the charts. (Exhibit 2, Stipulation of Facts, "Plea Agreement Exhibit B", facts 8, 15, 16, 28, 33, pp. 2-6.)

8. In the Stipulation of Facts, "Plea Agreement Exhibit B", fact 34 states as follows:

Defendant knew, or should have known that the controlled substance prescriptions issued through the JMC under his name and DEA number included:

- (a) hydrocodone, a Schedule III controlled substance which is a favorite of drug seekers and is commonly abused, traded, or sold "on the streets" for a profit; and
- (b) alprazolam, also known as "Xanax," a Schedule IV anti-anxiety medication which is often requested in combination with hydrocodone by drug seekers for the heightened effect the combination produces and is commonly abused, traded, or sold "on the streets" for a profit; and
- (c) phentermine, a Schedule IV controlled substance often used as an appetite suppressant to treat obesity, which can be habit forming and is a commonly abused drug. (Exhibit 2, "Plea Agreement Exhibit B", p.6.)

9. On August 23, 2010, Judge Copenhaver imposed Judgment in this case and as part of the sentence he imposed, Dr. Abad is to spend one (1) year and one (1) day in prison.

10. Under the provisions of 21 U.S.C. § 846 and 21 U.S.C. § 843(a)(2) and 18 U.S.C. § 3559(a)(5), a violation of 21 U.S.C. § 843 (a)(2) is a felony.

11. Under the provisions of West Virginia Code § 30-3-14(d):

The board...shall revoke the license of any physician...licensed...within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes.

Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article.

12. Copies of the above referenced documents, Exhibits 1 and 2, having been presented to the Board of Medicine at its regular meeting of the Board on September 13, 2010, where a quorum of the Board was present and voting, the Board determined that Dr. Abad had been found guilty by a court of competent jurisdiction of a felony involving prescribing a prescription drug including a controlled substance (hydrocodone, alprazolam and phentermine) under state or federal law for other than generally accepted therapeutic purposes.


13. The Board concluded as a matter of law that the license to practice medicine of Dr. Abad, License No. 17537, must be REVOKED under the provisions of West Virginia Code § 30-3-14(d), and accordingly, the Board voted in accordance with Board Rule 11 CSR 3 7 at said regular meeting to REVOKE the license to practice medicine and surgery of Dr. Abad, effective September 25, 2010.

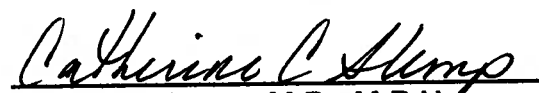
WHEREFORE, it is ORDERED that the license to practice medicine and surgery of Augusto Tenmatay Abad, M.D., License No. 17537, issued by the Board in 1993, is REVOKED, effective September 25, 2010.

Entered this 13th day of September, 2010.

WEST VIRGINIA BOARD OF MEDICINE


Reverend O. Richard Bowyer
President


Michael L. Ferrebee, M.D.
Vice President


Catherine Slemp, M.D., M.P.H.
Secretary

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

-----X
:
UNITED STATES OF AMERICA, :
:
v. : CRIMINAL NO. 2:10-00024
:
AUGUSTO T. ABAD, : FEBRUARY 26, 2010
:
Defendant. :
-----X

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN T. COPENHAVER, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE UNITED STATES: AUSA MONICA K. SCHWARTZ
U.S. Attorney's Office
P.O. Box 1713
Charleston, WV 25336

FOR THE DEFENDANT: JANE C. MORAN
P.O. Box 221
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WILLIAM T. WARD
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These proceedings were reported with use of a stenographic
machine and transcribed with use of computer-aided
transcription.

EXHIBIT 1

P R O C E E D I N G S

1:40 p.m.

1
2 THE CLERK: The case before the court is the *United*
3 *States of America versus Augusto T. Abad, M.D.*, Criminal Number
4 2:10-00024. Would counsel note their appearance for the record,
5 please.

6 MS. SCHWARTZ: On behalf of the United States, Your
7 Honor, Monica Schwartz; and I would like to state for the record
8 that with me at counsel table are Diversion Agent Dominic Grant
9 of DEA, West Virginia State Police Trooper T.C. Bledsoe, and
10 also Jim Lafferty of the FBI, who have been working on this
11 investigation, Your Honor.

12 THE COURT: Thank you.

13 MS. MORAN: Jane Moran representing the defendant,
14 Augusto Abad.

15 MR. WARD: W. Thomas Ward representing the defendant,
16 Your Honor.

17 THE COURT: Thank you.

18 Ms. Moran, are you and Mr. Ward retained counsel in the
19 case?

20 MS. MORAN: Yes, we are.

21 THE COURT: Thank you.

22 Ms. Schwartz, what's the purpose of the hearing today?

23 MS. SCHWARTZ: The purpose of this hearing, Your Honor,
24 is to present the court with a proposed plea agreement to an
25 information, Your Honor; the information alleging a violation of

1 21 United States Code, Section 846, that is, conspiracy to
2 misuse Dr. Abad's DEA enforcement administration number to
3 distribute a controlled substance, along with 18 United States
4 Code, Sections 1347 and 2, aiding and abetting health care
5 fraud, as charged in the information.

6 THE COURT: And is it the court's understanding that
7 the defendant proposes to plead guilty to those two offenses?

8 MS. SCHWARTZ: That is my understanding, Your Honor.

9 THE COURT: And is that your understanding as well,
10 Ms. Moran?

11 MS. MORAN: Yes, it is, Your Honor.

12 THE CLERK: Would the defendant please stand to be
13 sworn and raise your right hand.

14 (The defendant was sworn.)

15 EXAMINATION OF AUGUSTO ABAD

16 BY THE COURT:

17 Q. Dr. Abad, state your full name, please.

18 A. It's Augusto Tenmatay Abad.

19 Q. And what city or town do you live in?

20 A. Charleston, West Virginia.

21 Q. And how old are you?

22 A. Fifty-two.

23 Q. And what's the extent of your education?

24 A. Oh, I'm a Doctor of Medicine, and at the same time I did
25 residency in internal medicine and a fellowship in

1 endocrinology.

2 Q. And where did you obtain your undergraduate degree?

3 A. I obtained my Bachelor of Science degree and Doctor of
4 Medicine degree at Manila, Philippines.

5 Q. I should ask you first. How long have you been in the
6 United States now?

7 A. I've been here since 1988.

8 Q. Yes. And do you read and understand English well?

9 A. Yes, sir.

10 Q. And write it well?

11 A. Yes, Your Honor.

12 Q. Now then, have you at any time in the last few years been
13 under the treatment of a physician or anyone for a serious
14 physical illness or ailment of any kind?

15 A. No, Your Honor.

16 Q. Have you ever had occasion to consult or be under the
17 treatment of a psychiatrist, physician, counselor, psychologist,
18 or anyone for a mental illness or emotional disorder of any
19 kind?

20 A. No, Your Honor.

21 Q. Have you ever been under treatment for drug addiction?

22 A. No.

23 Q. Have you had any sedatives, medication, or drugs of any kind
24 during the past 48 hours?

25 A. No.

1 Q. Now then, has the government made available to you a copy of
2 the information on which this case is proceeding?

3 A. Yes.

4 Q. In which two counts are charged against you. Do you
5 understand that?

6 A. Yes, Your Honor.

7 Q. Have you read it?

8 A. Yes.

9 Q. And gone over it thoroughly with your attorneys, Ms. Moran
10 and Mr. Ward?

11 A. Yes.

12 Q. And have they explained to you everything you didn't already
13 understand about what you were charged with in those two counts
14 in the information?

15 A. Yes.

16 Q. Do you believe you understand everything in it?

17 A. Yes.

18 Q. I want to go over those two counts with you briefly, and I'm
19 simply going to read the first count which is itself simply but
20 one paragraph.

21 In count one, it's charged that from in or about January
22 2008 and continuing to on or about March 26, 2009, at or near
23 Kermit, Mingo County, West Virginia, and within the Southern
24 District of West Virginia, and elsewhere, defendant Augusto T.
25 Abad, M.D., and other individuals known to the United States

1 Attorney, knowingly conspired to commit offenses in violation of
2 Title 21, United States Code, Section 843(a)(2), that is,
3 knowingly and intentionally causing others to use a registration
4 number which was issued to him, in the course of the
5 distribution of, and for the purpose of acquiring and obtaining,
6 hydrocodone, a Schedule III controlled substance, and alprazolam
7 and phentermine, Schedule IV controlled substances, all of which
8 is charged to be in violation of Title 21, United States Code,
9 Section 846.

10 Do you understand what is charged there in count one?

11 A. Yes, Your Honor.

12 Q. Anything at all about that that you don't understand?

13 A. No.

14 Q. Let me note to you that if you were instead to plead not
15 guilty to that charge and go to trial on it, in order for you to
16 stand convicted of the offense charged against you in that
17 information in count one, it would be necessary that the
18 government prove to the satisfaction of this court beyond a
19 reasonable doubt each of the following essential elements of
20 that offense, and they are as follows:

21 First, that an agreement to knowingly and intentionally
22 cause others to use a registration number which was issued to
23 you in the course of the distribution of, and for the purpose of
24 acquiring and obtaining, hydrocodone, a Schedule III controlled
25 substance, and alprazolam and phentermine, Schedule IV

1 controlled substances, in violation of Title 21, United States
2 Code, Section 843(a)(2), existed between two or more persons,
3 that is, that agreement existed between two or more persons. Do
4 you understand that?

5 A. Yes.

6 Q. Secondly, that you had knowledge of the essential objectives
7 of the conspiracy. Do you understand that one?

8 A. Yes.

9 Q. Third, that you knowingly and voluntarily became part of the
10 conspiracy.

11 A. Yes.

12 Q. And that there was interdependence among the conspirators,
13 including you.

14 A. Yes.

15 Q. In that connection, I note to you that interdependence among
16 the alleged coconspirators is established when the activities of
17 alleged coconspirators in one aspect of the scheme are necessary
18 or advantageous to the success of the activities of
19 coconspirators in another aspect of that same scheme or the
20 success of the venture as a whole. Do you understand all that?

21 A. Yes.

22 Q. Now, in count two, it is the case that you are charged there
23 with an offense that has to do with health care fraud and aiding
24 and abetting it.

25 THE COURT: Before getting into that count, I note that

1 in the first paragraph, reference is made to a medical clinic
2 which is otherwise referred to as the clinic in that count.
3 Later on, reference is made to JMC patients. And I would ask if
4 the parties have an understanding as to the name of the clinic
5 and whether or not it is associated with JMC patients.

6 MS. MORAN: I believe we do, Your Honor.

7 THE COURT: What's the government's understanding of
8 the matter, because it's not explicitly stated here?

9 MS. SCHWARTZ: Yes, Your Honor. The clinic is the
10 Justice Medical Clinic, and the JMC patients would be patients
11 of the Justice Medical Center.

12 THE COURT: And is that your understanding as well,
13 doctor?

14 THE DEFENDANT: Yes.

15 THE COURT: And I take it yours also, Ms. Moran?

16 MS. MORAN: Yes, Your Honor.

17 THE COURT: And so, it will be so understood as the
18 court goes through a consideration of count two.

19 Q. In count two, it is stated, in part, that you, Dr. Abad,
20 were a medical doctor licensed in West Virginia and Kentucky,
21 and associated with a medical clinic, hereinafter the clinic,
22 located between Kermit and Crum, West Virginia; and that, as I
23 understand it, is the Justice Medical Clinic. Do you understand
24 that, too?

25 A. Yes.

1 Q. I note further that all controlled substance prescriptions
2 issued through the clinic were transmitted to and filled at a
3 pharmacy located at or near Kermit in Mingo County, West
4 Virginia, and later at a related pharmacy located immediately
5 adjacent to that clinic. Do you understand that as well?

6 A. Yes.

7 Q. It is also noted that you resided in Kanawha County, West
8 Virginia, where at times you reviewed electronic medical records
9 and photographs of JMC patients, that is, Justice Medical Clinic
10 patients, in your role as a supervisor of certain nurse
11 practitioners, otherwise referred to as NPs, and physicians'
12 statements -- excuse me, and physician's assistants, otherwise
13 known as PAs, at the clinic. Do you understand all that?

14 A. Yes.

15 Q. And then reference is made to the federal Medicare program,
16 and I take it that you are thoroughly familiar with it?

17 A. Yes.

18 Q. Count two goes on to charge as follows: From in or about
19 January 2008 and continuing to on or about March 26, 2009, at or
20 near Charleston, Kanawha County, West Virginia, and within the
21 Southern District of West Virginia, and elsewhere, you, aided
22 and abetted by others known to the United States Attorney, did
23 knowingly and willfully execute and attempt to execute a scheme
24 and artifice to defraud a health care benefits program, that is,
25 the Medicare program, which scheme and artifice involved

1 misrepresentation and concealment of material fact, and to
2 obtain, by means of materially false and fraudulent pretenses
3 and representations, money owned by and under the control and
4 custody of the Medicare program, in connection with the payment
5 for medical services and prescription medication. Do you
6 understand that as well?

7 A. Yes.

8 Q. And thence follows the section of count two that falls under
9 the heading of the Manner and Means of Execution of the Scheme,
10 and it concludes with the following: As a result of the
11 fraudulent scheme, defendant Augusto T. Abad, M.D., aided and
12 abetted by others known to the United States Attorney, would and
13 did cause the Medicare program to pay \$110,959.49 for controlled
14 substances ostensibly prescribed by a physician which were not,
15 in fact, prescribed by a physician. Do you understand that as
16 well?

17 A. Yes.

18 Q. And do you understand as well fully those paragraphs that I
19 have not read and gone over with you, paragraphs numbered 6, 7,
20 8, and 9, that have to do with the manner and means of execution
21 of the scheme?

22 A. Yes.

23 Q. All of which is charged to be in violation of Title 18,
24 United States Code, Sections 1347 and 2. Do you understand all
25 that?

1 A. Yes.

2 Q. Now, if you were to go to trial on count two, in order for
3 you to stand convicted of the offense charged in that count, it
4 would be necessary that the government prove to the satisfaction
5 of this court and a jury beyond a reasonable doubt each of the
6 following five essential elements of that offense, and they are
7 as follows:

8 First, that from in or about January 2008 and continuing to
9 on or about March 26, 2009, at or near Charleston, Kanawha
10 County, West Virginia, you executed and attempted to execute a
11 scheme and artifice to defraud a health care benefits program,
12 that is, the Medicare program, funded by the federal government,
13 which scheme and artifice involved misrepresentation and
14 concealment of material facts, and to obtain, by means of
15 materially false and fraudulent pretenses and representations,
16 money owned by and under the control and custody of the Medicare
17 program, in connection with the payment for medical services and
18 for prescription medication. Do you understand the first
19 essential element?

20 A. Yes.

21 Q. Secondly, that the manner and means as described in count
22 two were performed for the purpose of executing the scheme to
23 defraud Medicare, and would and did cause the Medicare program
24 to pay \$119,959.49 for controlled substances prescribed by a
25 physician, which were not, in fact, prescribed by a physician as

1 more fully alleged in the information in count two.

2 MS. SCHWARTZ: Your Honor, if we may stop for a moment.
3 I think I may have misheard the court when you quoted the
4 monetary figure.

5 THE COURT: Pardon me?

6 MS. SCHWARTZ: I wasn't clear on the monetary figure
7 that you just stated, Your Honor. Would you repeat that for me,
8 please? I'm sorry.

9 THE COURT: I intended to say \$119,959.49.

10 MS. SCHWARTZ: I think the correct number is 110,000
11 dollars, Your Honor, 959.49.

12 THE COURT: Oh, excuse me. Just a moment. I imagine
13 that's a mistake in Dr. Tiano's plea. Just a minute.

14 Q. Yes, the figure should have been, as Ms. Schwartz has just
15 pointed out, \$110,959.49. And so, I'm going to state the entire
16 second element again.

17 That the manner and means as described in count two were
18 performed for the purpose of executing the scheme to defraud
19 Medicare, and would and did cause the Medicare program to pay
20 \$110,959.49, for controlled substances prescribed by a
21 physician, which were not, in fact, prescribed by a physician,
22 as alleged in the information, and was reasonably foreseeable by
23 you. Do you understand what's charged in the -- that is, the
24 second essential element?

25 A. Yes.

1 Q. Third, that the scheme to defraud involved the
2 misrepresentation or concealment of material fact. Do you
3 understand that as well?

4 A. Yes.

5 Q. Fourth, that you were aided by and abetted by others known
6 to the United States Attorney.

7 A. Yes.

8 Q. And lastly, five, that you acted knowingly, willfully, and
9 with specific intent to defraud. Do you understand that as
10 well?

11 A. Yes.

12 Q. Now then, have you discussed the charges contained in both
13 of these counts of the information thoroughly with your
14 attorneys, Ms. Moran and Mr. Ward?

15 A. Yes.

16 Q. Did you tell them all the facts?

17 A. Yes.

18 Q. Have they counseled and advised you as to the nature of the
19 offenses with which you are charged in those two counts?

20 A. Yes.

21 Q. Insofar as you can tell, have they also counseled and
22 advised you as to all possible defenses you may have to those
23 charges?

24 A. Yes.

25 Q. Do you fully understand then the charges contained in each

1 count of the information?

2 A. Yes.

3 Q. Are you ready to enter a plea to that charge?

4 A. Yes.

5 Q. Before proceeding, I want to note to you that you are being
6 proceeded against by information which is a charging document
7 that the United States Attorney prepares. Do you understand
8 that?

9 A. Yes.

10 Q. And I want you to understand that you are entitled to insist
11 that this matter be proceeded against you not by this
12 information, but, rather, you have the constitutional right to
13 be proceeded against by indictment by a grand jury. Do you
14 understand that?

15 A. Yes.

16 Q. And do you further understand that if instead this matter
17 were presented to a grand jury, unless that grand jury found by
18 a majority of its entire membership that there was probable
19 cause to believe that you committed the offense charged against
20 you in the information, in this case the offenses charged in the
21 information, you would stand free of those charges. Do you
22 understand that?

23 A. Yes.

24 Q. Now, notwithstanding your right to be proceeded against by
25 indictment rather than by information, have you made a decision

1 as to whether or not you wish to waive your right to be
2 proceeded against by grand jury indictment, and consent instead
3 that this matter may be proceeded with by information?

4 A. Yes.

5 Q. And what is that decision?

6 A. Enter a guilty plea. To proceed by information.

7 Q. If that is the case, I'm going to have you to sign a writing
8 to that effect.

9 THE CLERK: Dr. Abad, if you would please listen as I
10 read.

11 *United States of America versus Augusto T. Abad, M.D.,*
12 *Criminal Number 2:10-00024.*

13 Waiver of Indictment.

14 I, Augusto T. Abad, the above-named defendant, who is
15 accused of one violation of Title 21, United States Code,
16 Section 846, and one violation of Title 18, United States Code,
17 Sections 1347 and 2, as charged in the two-count information
18 filed in this action, being advised of the nature of the
19 charges, the proposed information, and of my rights, hereby
20 waive in open court on February 26, 2010, prosecution by
21 indictment, and consent that the proceeding may be by
22 information rather than by indictment.

23 THE DEFENDANT: Yes.

24 (Pause.)

25 THE COURT: The defendant's written waiver of

1 prosecution by indictment, and his consent that this proceeding
2 may be by information rather than by indictment, having been
3 signed by him in the presence of the court, is received and
4 filed.

5 The court understands a plea agreement has been entered
6 into, and I'll ask if you have the original of that agreement,
7 Ms. Schwartz, and if I might see it, please.

8 MS. SCHWARTZ: May I approach, Your Honor.

9 THE COURT: Please.

10 BY THE COURT:

11 Q. Mr. Abad, I have before me what appears to be a nine-page
12 written plea agreement under date of January 12, 2010. It is in
13 letter form. It has attached to it a copy of the information
14 that we've just gone over, and it has attached to it as well
15 another document that is eight pages in length that is entitled
16 Stipulation of Facts. The letter is addressed to your
17 attorneys, Ms. Moran and Mr. Ward, from the United States
18 Attorney, and signed on his behalf by Ms. Schwartz. Is that the
19 plea agreement that you read?

20 A. Yes, sir.

21 Q. Have you read it in its entirety?

22 A. Yes.

23 Q. Gone over it thoroughly with your attorneys who are with you
24 here today?

25 A. Yes.

1 Q. Did they explain to you everything you didn't already
2 understand about it after you first read it?

3 A. Yes.

4 Q. Do you believe that you understand everything in that
5 agreement?

6 A. Yes.

7 Q. Anything at all about it that you don't understand?

8 A. No.

9 Q. I'm going to have the original of this placed before you,
10 and I'm going to go over some of these provisions in this
11 agreement with you now to be sure you do indeed understand them,
12 and I'm going to ask, Ms. Schwartz, if you would be kind enough
13 to deliver that to Ms. Moran.

14 And you may be seated as we go over this.

15 I say, you may be seated as we go over this.

16 In the plea agreement, it notes, first of all, that you
17 agree to be proceeded against by the information; and secondly,
18 that you will plead guilty to the two charges contained in it.

19 And third is set out the maximum potential penalty in the
20 case. For the violation of count one, it's noted that the
21 maximum penalty for that offense is imprisonment for as long as
22 four years, a fine of as much as \$250,000, a term of supervised
23 release of as long as one year, a mandatory special assessment
24 of \$100, and in addition to that, you may be required to make
25 restitution as set forth in the plea agreement, and in addition

1 to that under count one, that the court may deny certain federal
2 benefits to you for as long as five years. Do you understand
3 that with respect to count one?

4 A. Yes.

5 Q. As to count two, the maximum penalty is imprisonment for as
6 long as ten years, a fine of as much as \$250,000, a term of
7 supervised release of as long as three years, a mandatory
8 special assessment of \$100, and, once again, restitution as set
9 forth there. Do you understand that as well?

10 A. Yes.

11 Q. And when you add all that together, it means that by virtue
12 of your plea to both of these counts of guilty, you are subject
13 to a term of imprisonment of as long as fourteen years, a fine
14 of as much as \$500,000, a term of supervised release of as long
15 as three years, a special assessment of \$200, the court may
16 under certain circumstances deny federal benefits to you for as
17 long as five years, and then you are subject to making
18 restitution as set forth in the plea agreement. Do you
19 understand all that?

20 A. Yes.

21 Q. In addition to that, a further term of the plea agreement is
22 set forth in paragraph 4, and I'm going to read that, entitled,
23 "License Revocation," in which it is stated that you agree:

24 (a) to surrender all of your Drug Enforcement Administration
25 Certificates of Registration at a time and place to be

1 determined by the United States;

2 (b) not to oppose revocation of any registration to dispense
3 controlled substances pursuant to 21 U.S.C., Section 824(a) and
4 21 C.F.R. 1301.45 on the ground that you've been convicted of a
5 felony relating to a controlled substance and committed such
6 acts as would render your registration under 21 U.S.C., Section
7 823, inconsistent with the public interest as determined under
8 that section.

9 Do you understand that as well?

10 A. Yes.

11 Q. And, finally, (c) that you are not to apply for
12 re-registration until on or after the termination of any period
13 of imprisonment and/or supervision which may be imposed by the
14 court, meaning supervised release.

15 Do you understand that?

16 A. Yes.

17 THE COURT: Now then, has the special assessment of
18 \$200 been paid?

19 MS. MORAN: No, it has not, Your Honor, but we will pay
20 it before we leave the courthouse today.

21 Q. Is it the case, Dr. Abad, that that \$200 will be paid today?

22 A. Yes.

23 THE COURT: And is that satisfactory with the
24 government?

25 MS. SCHWARTZ: That is, Your Honor.

1 Q. That being the case, there's no need to read paragraph 5;
2 the court simply noting that if you fail to make that payment,
3 Dr. Abad, the government is in a position to void this
4 agreement. Do you understand that?

5 A. Yes.

6 Q. Then paragraph 6 relates to restitution, and in it, it is
7 stated Dr. Abad agrees that he owes restitution in the amount of
8 \$110,959.45, and agrees to pay that restitution, with interest
9 as allowed by law, to the fullest extent financially feasible.

10 And thence follows the further agreement with respect to
11 restitution that sets forth in subparagraphs 6(a), (b), (c), and
12 (d), and ends with the final paragraph in (e) under which you
13 agree not to appeal any order of the district court imposing
14 restitution, unless the amount of that restitution exceeds the
15 sum of \$110,959.45 and interest, as set forth earlier in the
16 agreement.

17 Do you understand all that?

18 A. Yes.

19 Q. Then there's a provision for your payment of monetary
20 penalties; the requirement of your cooperation; the use immunity
21 and limitations on immunity; and I would ask if you've discussed
22 all of those items thoroughly with your attorneys and do you
23 understand them?

24 A. Yes.

25 Q. Then in paragraph 11, it notes that you and the United

1 States stipulate and agree that the facts comprising the
2 offenses of conviction and relevant conduct include the facts
3 outlined in the stipulation of facts, a copy of which is
4 attached to this plea agreement as plea agreement exhibit B. Do
5 you understand that?

6 A. Yes.

7 Q. Now, I want you to turn to that eight-page stipulation of
8 facts for just a moment, and I want to inquire of you as to
9 whether or not you understand every word in that stipulation of
10 facts.

11 A. Yes.

12 Q. And you understand that it is an agreement of facts between
13 you and the government; that is, you are agreeing that these are
14 the facts.

15 A. Yes.

16 Q. Let's go to page 1. Anything on the first page of that
17 stipulation that you don't understand?

18 A. No.

19 Q. And on page 2?

20 A. No.

21 Q. And on page 3?

22 A. No.

23 Q. Page 4?

24 A. No.

25 Q. Page 5?

1 A. No.

2 Q. Page 6?

3 A. No.

4 Q. Page 7?

5 A. No.

6 Q. And page 8?

7 A. No.

8 Q. Do you understand every bit of it?

9 A. Yes.

10 Q. And that's what you agree to?

11 A. Yes.

12 Q. Now, let me note to you that if the court accepts this plea
13 agreement and you later withdraw from this agreement or breach
14 any of its terms and if you are thereafter then prosecuted on
15 any of the charges set forth in the information, the government
16 may during the course of that proceeding and, more particularly,
17 at trial introduce as evidence your agreement to these facts.
18 Do you understand that?

19 A. Yes.

20 MS. MORAN: Your Honor, may I make a note of the fact,
21 I refer you to paragraphs 21, 22, 23 --

22 THE COURT: You are referring to page 4 now --

23 MS. MORAN: -- 24. Yes, on page 4 and 5.

24 THE COURT: -- and 5.

25 MS. MORAN: We have submitted a document which I just

1 received from the Board of Medicine saying that they have
2 reviewed the specific case that is involved here, and came up
3 with a finding of no probable cause that there had been any
4 malpractice or improper doctoring by Dr. Abad on this particular
5 issue. It does not change the fact that this happened.

6 THE COURT: I understand what you are saying then is a
7 supplement to what is in the stipulation.

8 MS. MORAN: I'm sorry, Your Honor, I misunderstood. We
9 have just presented a document to the U.S. Attorney and leave
10 open the possibility of some kind of amendment at a later date.
11 It does not change the facts as they are set forth here. I just
12 wanted to make it clear.

13 THE COURT: Well, let's go over it. Is what you are
14 saying entirely aside from everything that is set forth in the
15 stipulation?

16 MS. MORAN: Apparently it is.

17 MS. SCHWARTZ: I'm sorry.

18 THE COURT: Suppose you confer with each other first.

19 MS. MORAN: Okay.

20 (Pause.)

21 MS. MORAN: Yes, okay. Your Honor, I think we agree
22 that we are talking about the same issue, and I'm saying it
23 doesn't change the stipulation of facts. It simply is something
24 that I think is relevant to the stipulation of facts in terms of
25 Dr. Abad and the independent finding of the Board of Medicine,

1 and I wanted to make a note of it here today.

2 THE COURT: I understand that what you may be saying is
3 simply that with respect to paragraphs 21 through 24 of the
4 stipulation --

5 MS. MORAN: Uh-huh.

6 THE COURT: -- that that which is set forth there is
7 completely correct --

8 MS. MORAN: It is correct.

9 THE COURT: -- but -- just a minute now.

10 MS. MORAN: Oh, I'm sorry.

11 THE COURT: -- but that you wish to note that the
12 matter that is the subject of those paragraphs has itself been
13 the subject of an investigation that has concluded that there
14 was no malpractice on the part of Dr. Abad.

15 MS. MORAN: That's correct, Your Honor.

16 THE COURT: But it is not part of the stipulation.

17 MS. MORAN: No, it is not.

18 THE COURT: All right.

19 Is that your understanding as well, Dr. Abad?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And I take it that of the government's as
22 well?

23 MS. SCHWARTZ: I'm not exactly sure what information
24 they had. I know there's a letter that Ms. Moran provided me
25 from a Linda Stumbo. The letter doesn't refer to SB as the

1 patient --

2 THE COURT: Let's leave it as this. I understand the
3 government is not agreeing with that supplement that Ms. Moran
4 has placed on the record at this time. That's a matter that can
5 be discussed with the government later and resolved, if need be,
6 at a later time.

7 MS. MORAN: Yes.

8 MS. SCHWARTZ: Yes, Your Honor.

9 MS. MORAN: And I've made my record, and that's all I
10 wanted to do.

11 THE COURT: Thank you.

12 BY THE COURT:

13 Q. Now, continuing with the plea agreement on to the next
14 paragraph on waiver of appeal and collateral attack. Dr. Abad,
15 this is a very important part of this plea agreement, and I note
16 to you at the outset that one of the things the court will be
17 doing in the course of this case is to determine under the
18 advisory United States Sentencing Guidelines the advisory
19 guideline range that is suggested in your case. I say that's a
20 very important part of the process, and the court will be paying
21 a great deal of attention to what that advisory guideline range
22 turns out to be. The court, however, is not bound by that range
23 and can sentence you to less than the range or more than the
24 range. But, once again, it is a very important part of the
25 sentencing process. Do you understand all that?

1 A. Yes, Your Honor.

2 Q. Do you also understand that under paragraph 12, you agree
3 not to seek any appellate review of the court's determination of
4 what that advisory guideline range is under the advisory United
5 States Sentencing Guidelines unless you've made an objection
6 before the close of your sentencing. Do you understand that?

7 A. Yes, Your Honor.

8 Q. And do you also understand that under the terms of this
9 agreement, if the court sentences you either to a sentence
10 within that guideline range or below it, you forever waive your
11 right to appeal that sentence?

12 A. Yes, Your Honor.

13 Q. Do you understand that, too?

14 Now then, do you also understand that quite apart from
15 appellate rights, you waive one other very important right, too,
16 and it is this. In addition to appellate rights, defendants
17 sometimes have the right to collaterally attack their sentence
18 later on as well as collaterally attacking their conviction
19 later on. That's done by a so-called habeas proceeding or a
20 Section 2255 motion. The important thing here is that you are
21 also waiving your right to collaterally attack your sentence as
22 well as your conviction later on. Do you understand that?

23 A. Yes, Your Honor.

24 Q. And there's only one exception to everything that I've told
25 you about both appeal and collateral attack, and that is, you

1 can do so on the basis of ineffective assistance of counsel.

2 That's the only ground left to you. Do you understand that?

3 A. Yes, Your Honor.

4 Q. Thank you. And then the further waiver in the next
5 paragraph 13 is that you indeed waive your right to receive and
6 request from any department or agency of the United States any
7 records pertaining to the prosecution or investigation of your
8 case. Do you understand that?

9 A. Yes, Your Honor.

10 Q. Now, this states specifically you waive that right under the
11 Freedom of Information Act and you waive it under the Privacy
12 Act of 1974, but you waive it on every other ground as well. Do
13 you also understand that as well?

14 A. Yes, Your Honor.

15 Q. And then reference is made to final disposition at which the
16 United States can come in and inform the court of various
17 matters that are set forth there and during the course of the
18 case can also inform the probation office of relevant facts and
19 conduct. Have you read and understand that provision?

20 A. Yes, Your Honor.

21 Q. Do you further understand that under paragraph 15, if either
22 you or the United States violate the terms of this agreement, it
23 may be voided by the other party. Do you understand that also?

24 A. Yes, Your Honor.

25 Q. And then lastly, I note of particular importance is the next

1 paragraph, that this is the entire agreement between you and the
2 United States. There are no other agreements of any kind. Do
3 you understand that also?

4 A. Yes, Your Honor.

5 Q. Now then, is that your signature on the next page, page 9?

6 A. Yes, Your Honor.

7 Q. And are those your initials at the bottom of each page of
8 the document prior to that point?

9 A. Yes, Your Honor.

10 Q. And turning to this stipulation of facts, that eight-page
11 stipulation of facts, which is such an important part of this
12 proceeding, on the eighth page, is that your signature?

13 A. Yes, Your Honor.

14 Q. And on the other seven pages, are those your initials at the
15 foot of that document?

16 A. Yes, Your Honor.

17 Q. Did you approve of this agreement when it was reached?

18 A. Yes, Your Honor.

19 Q. And when you signed it?

20 A. Yes, Your Honor.

21 Q. And do you approve of it now?

22 A. Yes, Your Honor.

23 THE COURT: Thank you.

24 Ms. Moran, would you hand the original of that agreement to
25 the clerk for filing, please.

1 MS. MORAN: Yes.

2 Q. Dr. Abad, would you stand again, please.

3 What then is your plea to count one of the information in
4 this case?

5 A. Guilty.

6 Q. And what is your plea to count two of the information in
7 this case?

8 A. Also guilty, Your Honor.

9 Q. Before I accept your pleas of guilty to those two counts, I
10 want to make certain that you understand a number of things in
11 connection with your pleas of guilty, the charges against you,
12 and your constitutional rights.

13 First of all, the information in this case is only a formal
14 charge which informs you of the offenses with which you are
15 charged and serves to bring you into court to answer those
16 charges. It is not any evidence whatever of guilt. Do you
17 understand that?

18 A. Yes, Your Honor.

19 Q. Do you also understand that you are entitled to the
20 assistance of a lawyer at every stage of these proceedings,
21 including trial should you wish to go to trial?

22 A. Yes, Your Honor.

23 Q. Do you also understand that if you were without sufficient
24 funds to engage an attorney to represent you for all purposes
25 and all stages of this proceeding, then the court would appoint

1 counsel for you at the expense of the United States, and the
2 costs of your attorney would be entirely at the expense of the
3 United States?

4 A. Yes, Your Honor.

5 Q. And in that event, so, too, would all the rest of the costs
6 of these proceedings. Do you understand that as well?

7 A. Yes, Your Honor.

8 Q. Now then, do you further understand that if you should
9 instead enter a plea of not guilty, that you have the right to a
10 speedy and public trial by jury, you have the right to be
11 confronted with the government's witnesses and to cross-examine
12 them, you have the right to use the process of this court to
13 compel witnesses to come in and testify on your behalf, and you
14 are presumed to be innocent of these charges until proven guilty
15 beyond a reasonable doubt? Do you understand all that?

16 A. Yes, Your Honor.

17 Q. Do you further understand that if you instead pled not
18 guilty and went to trial, at that trial you need not take the
19 witness stand?

20 A. Yes. Yes, Your Honor.

21 Q. Do you further understand that if you did go to trial and
22 chose not to testify, that fact would create no inference or
23 presumption of guilt, and the jury would be so instructed,
24 since, as I've already informed you, you are presumed to be
25 innocent of these charges until proven guilty beyond a

1 reasonable doubt? Do you understand that?

2 A. Yes, Your Honor.

3 Q. Do you also understand that should you plead not guilty, at
4 the trial it would be necessary that the government come forward
5 with witnesses to prove these charges against you beyond a
6 reasonable doubt?

7 A. Yes, Your Honor.

8 Q. Do you further understand that by entering a plea of guilty
9 to each of these two counts, you waive your right to require the
10 government to prove these charges against you beyond a
11 reasonable doubt and you waive the constitutional rights the
12 court is telling you about?

13 A. Yes, Your Honor.

14 Q. In particular, you waive your constitutional right against
15 self-incrimination with respect to the offense to which you've
16 pled guilty as set forth in the two counts of the information.

17 A. Yes.

18 Q. Do you further understand that if the court accepts your
19 pleas of guilty, there will not be a further trial of any kind,
20 so that by pleading guilty, you waive your right to trial,
21 including your right to trial by jury?

22 A. Yes, sir.

23 Q. Do you also understand the court does intend to question
24 you, under oath, on the record, and in the presence of your
25 attorney, about the offenses to which you've pled guilty; and if

1 you fail to answer those questions truthfully, you may later be
2 prosecuted for perjury or false swearing on account of that
3 failure?

4 A. Yes, Your Honor.

5 Q. Do you further understand that by pleading guilty, the court
6 may in its discretion impose the same penalty as if you'd stood
7 trial and been convicted of these two offenses? Do you
8 understand that?

9 A. Yes.

10 Q. Now, I've already told you, just as the plea agreement does,
11 what the separate penalties for these two offenses are.
12 Combined, they are as follows: Imprisonment for as long as
13 fourteen years; a fine of as much as \$500,000; a term of
14 supervised release of as long as three years; a \$200 special
15 assessment which you are going to pay later today; and
16 restitution as set forth in the plea agreement; and as I've told
17 you, if restitution is limited to the \$110,959 figure that is
18 set forth in the agreement, you forever waive your right to
19 appeal the imposition of that restitution. Do you understand
20 all that, do you?

21 A. Yes, Your Honor.

22 Q. Now then, I've mentioned supervised release. Do you know
23 what is meant by that?

24 A. Yes, Your Honor.

25 Q. I want to go over that with you because it's a very

1 important part of your sentence. In addition to any term of
2 imprisonment that the court would impose in this case, the court
3 would also impose a term of supervised release, which I have
4 indicated could be as long as three years, and as a practical
5 matter, that's what it will probably be. That term of
6 supervised release will be subject to various terms and
7 conditions, some of which may limit your freedom to some limited
8 extent.

9 The important thing about that is this. If you violate any
10 of those terms or conditions, what that means is that your
11 supervised release can be revoked; and if it is, that means you
12 could be sent back to prison to serve a further term of
13 imprisonment, in addition to that which you would already have
14 served for this offense, which could be as long as another two
15 years. And at that time, the court may place you on supervised
16 release again; and if you violated that second term of
17 supervised release, once again, you would be subject to a term
18 of imprisonment of another two years. And if at that time, the
19 court sentenced you to less than another two years, you could be
20 placed on supervised release still again. But for all the
21 violations of all the terms of supervised release, you could not
22 be sentenced to more than a total of four years. Do you
23 understand that as well?

24 A. Yes, Your Honor.

25 Q. Now, I mentioned to you the importance of the advisory

1 sentencing guidelines in this case. I simply note to you that
2 in determining what that advisory guideline range is, a number
3 of factors are taken into account, and they include such things
4 as your role in the offense or offenses to which you've pled
5 guilty, your criminal history, whether you've accepted
6 responsibility for your misconduct, whether you've obstructed
7 justice in any way, whether you are a career criminal, whether
8 you make your livelihood from crime, and quite a number of other
9 factors. I'm not going into any others with you, but if you
10 have any questions on any other factors that might apply to your
11 case, I'll be happy to try to answer them. Do you have anything
12 further on that?

13 A. No, Your Honor.

14 Q. Now, I want to note to you that there isn't anyone right now
15 who can tell you exactly where your advisory sentencing
16 guideline range will fall -- not your attorneys, nor the
17 attorney for the government, nor the court. That is not going
18 to become clear until after the probation department has made
19 its presentence investigation in this case and has filed its
20 report, and the parties have had a chance to go over it and
21 object to it and try to work those objections out; and to the
22 extent that objections remain, the court will pass upon them at
23 sentencing; and at sentencing, the court may raise matters of
24 its own, including those very same things the parties had
25 already tried to work out by agreement. And so, until we reach

1 the point where the court has ruled on all those matters, it
2 will not become clear exactly where your advisory guideline
3 range will fall. Do you understand that?

4 A. Yes, Your Honor.

5 THE COURT: Just one moment, please.

6 Before I proceed, I want to ask the government about its
7 view of one matter. I normally simply state the monetary amount
8 of the fine without getting into twice the gross pecuniary gain
9 or loss. Is that of any significance in this case beyond the
10 monetary amount?

11 MS. SCHWARTZ: I don't believe so, Your Honor.

12 THE COURT: Thank you.

13 Q. Let me ask, Dr. Abad. Do you understand that the court is
14 not bound by your plea agreement, but should the court not
15 accept it, you may withdraw your plea of guilty?

16 A. Yes, Your Honor.

17 Q. Dr. Abad, I want to note to you that you have the right to
18 plead not guilty; and if there is any doubt in your mind
19 whatever as to whether you are guilty of one or both of these
20 counts, the court would urge you to plead not guilty. What is
21 your wish?

22 A. I plead guilty.

23 Q. Other than your written plea agreement filed and read here
24 today, have you been made any promises by anyone of leniency or
25 light sentence or probation?

1 A. No, Your Honor.

2 Q. Have you been threatened by anyone in any way, or has anyone
3 used any means of intimidation or coercion or pressure to induce
4 you to enter a plea of guilty against your will?

5 A. No, Your Honor.

6 Q. Are you satisfied with your attorneys in this case,
7 Ms. Moran and Mr. Ward?

8 A. Yes, Your Honor.

9 Q. Do you feel that they have represented you fully and fairly?

10 A. Yes, Your Honor.

11 Q. Have they spent a good deal of time with you developing this
12 case?

13 A. Yes, Your Honor.

14 Q. Now, back to your written plea agreement filed and read here
15 today. Is that the entire agreement between you and the United
16 States?

17 A. Yes, Your Honor.

18 Q. Are there any side agreements of any kind?

19 A. No, Your Honor.

20 Q. Do you then offer to enter pleas of guilty to each of the
21 two counts in the information voluntarily and of your own free
22 will?

23 A. Yes, Your Honor.

24 Q. Do you do that with the full understanding that you'll be
25 waiving your constitutional rights the court has told you about,

1 including your right to a fair and speedy trial by jury?

2 A. Yes, Your Honor.

3 Q. And do you do it as well with the full knowledge of the
4 consequences of your plea, including the penalty that the court
5 may in its discretion impose in this case, which is the maximum
6 penalty that I have told you about and as set forth in the plea
7 agreement?

8 A. Yes, Your Honor.

9 Q. Do you waive further reading of the information at this time
10 in open court or do you waive further reading of it?

11 A. Yes, Your Honor.

12 Q. That is, you waive further reading?

13 A. Yes, Your Honor.

14 MS. MORAN: Yes.

15 THE COURT: The clerk will take the defendant's plea in
16 writing.

17 THE CLERK: Please listen again as I read.

18 *United States of America versus Augusto T. Abad, M.D.,*
19 *Criminal Number 2:10-00024.*

20 Guilty Plea.

21 In the presence of Jane C. Moran and W. Thomas Ward, my
22 counsel, who have fully explained the charges contained in the
23 information against me, and having received a copy of the
24 information from the United States Attorney before being called
25 upon to plead, I hereby plead guilty to the two-count

1 information.

2 (Pause.)

3 THE COURT: The defendant's written plea of guilty to
4 the two-count information in this case, having been signed by
5 him in the presence of the court, is received and filed.

6 BY THE COURT:

7 Q. Dr. Abad, tell me in your own words what you did, and let's
8 focus first on count one which charges a conspiracy to misuse
9 your Drug Enforcement Administration number. Tell me about
10 that.

11 A. Well, Your Honor, ever since 1994, I've been a practicing
12 physician down in the southeast Kentucky and the Williamson,
13 West Virginia, area. Initially, the first five and a half years
14 as an ER physician; thereafter as an internist and as a diabetes
15 specialist. And I am happy to say that with all those years
16 I've practiced medicine down there, I have made the community
17 healthier, and not only with the way I took care of my patients,
18 but also the way I educated my patients and their families.

19 Q. I appreciate that, but I need for you now to focus on the
20 charges that are contained in count one.

21 A. Uh-huh. The problem with them, though, is that when I
22 started working there, educated the nurse practitioners. I --
23 I --

24 Q. When you started working where?

25 A. Well, supervising the nurse practitioners at the Justice

1 Medical Clinic.

2 Q. And that was when?

3 A. That was January of 2008.

4 Q. Please go ahead.

5 A. Uh-huh, and when I started supervising them, not only did I
6 supervise them on -- on -- on how to manage different medical
7 problems, but at the same time also tried to supervise them on
8 who and when to prescribe controlled substances. Fortunately --
9 unfortunately, about that same time, we have a good number of
10 physicians who left the area in the Williamson/South Williamson
11 area, and I got so busy and my census got so big, that I had to
12 spend lesser time with the nurse practitioners, to a point that
13 I gave them -- I gave them more leniency or more room to manage
14 patients on their own; at the same time, use my DEA number, but
15 I told them they have to use it with the right -- with the right
16 knowledge and with the right intention.

17 Unfortunately, though, because of my busy schedule, I wasn't
18 really able to -- to supervise them, and because of that, there
19 was misuse and abuse of my DEA number. At the same time, I
20 wasn't able also to check with the different government agencies
21 about my -- the use of my DEA number. I failed to do that. And
22 at the same time also --

23 Q. Well, let me just ask you this. Is it the case that you
24 allowed the nurse practitioners to use your registered number
25 without supervision so that they were acting on their own?

1 A. Yes.

2 Q. And that was during this period that began in January of
3 2008, and did it extend to March 26, 2009, that is, cover about
4 a year and three months?

5 A. Most of this actually happened around the summer of 2008,
6 because from January 2008 to about summer, I really spent time
7 and I tried to supervise the nurses as much as I can.

8 Q. Well, let's say then starting in the summer of 2008, did
9 that continue to be a problem then through the following March?

10 A. Yes, Your Honor.

11 Q. And all of it occurred in connection, did it, with the
12 Justice Medical Clinic?

13 A. Yes, just with the Justice Medical Clinic.

14 Q. Now, in addition to nurse practitioners misusing your
15 registration number, that is, the DEA number, did physician's
16 assistants also misuse it?

17 A. Yes, I think there was one physician assistant who worked at
18 that time, but she only worked like for a few months at Justice
19 Medical Center.

20 Q. But that was during the same period of time we're talking
21 about?

22 A. Yes, but, in fact, the physician assistant who worked there
23 was quite rigid, and, in fact, she usually would call me if --
24 about when and when -- when and how much she would prescribe
25 this medication. So that single physician assistant actually

1 had good communications with me.

2 Q. Well then, let's leave the physician assistant out of this
3 and simply refer to nurse practitioners who are using your
4 registration number. You know they are using your registration
5 number. They are not doing so under your supervision. Have I
6 stated it correctly?

7 A. Yes, uh-huh.

8 Q. And how many different nurse practitioners were involved in
9 the misuse of your registration number that you knew about?

10 A. I would say three, three nurse practitioners.

11 Q. Thank you. And in the misuse of your registration number,
12 is it correct that that was done in the course of the
13 distribution of and for the purpose of acquiring, among other
14 things, hydrocodone?

15 A. Yes, it's mostly hydrocodone.

16 Q. And what else?

17 A. And alprazolam.

18 Q. And phentermine?

19 A. Yes, uh-huh.

20 Q. All three of those --

21 A. Yes, Your Honor.

22 Q. -- and all being controlled substances.

23 A. Yes, Your Honor.

24 THE COURT: Now, let me ask, first, whether or not with
25 respect to count one, the defendant has any further evidence

1 regarding the factual basis.

2 MS. MORAN: No, Your Honor, we do not.

3 THE COURT: The Justice Medical Clinic is located in
4 Mingo County, West Virginia, isn't it?

5 MS. MORAN: That's correct.

6 THE COURT: That is, doctor?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And does the government have any further
9 evidence on count one?

10 MS. SCHWARTZ: Your Honor, I would clarify that
11 although Justice Medical Clinic is located in -- close to Mingo
12 County, it's actually slightly over the line in Wayne County.

13 THE COURT: All right.

14 MS. SCHWARTZ: However, the pharmacy to which the drugs
15 were being sent was originally in Mingo County, and Dr. Abad's
16 home, from which he was ostensibly reviewing some of the
17 documents, was in Kanawha County.

18 THE COURT: Doctor, has Ms. Schwartz stated all that
19 correctly?

20 THE DEFENDANT: Yes, Your Honor.

21 MS. SCHWARTZ: And the court, you asked, I believe, if
22 the United States had anything else; is that correct?

23 THE COURT: Yes.

24 MS. SCHWARTZ: I would also like to add that it is the
25 United States --

1 THE COURT: Now, before you go on. I want you to
2 listen very carefully, doctor, to what Ms. Schwartz says,
3 because either as she goes along or at the end of it, I'm going
4 to ask you whether it's correct.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Please go ahead.

7 MS. SCHWARTZ: I don't -- I believe that Dr. Abad has
8 stated a sufficient factual basis for a plea to count one. And
9 I don't think that he actually disagrees with what I'm about to
10 say, but I want it to be clear for the record, that it is the
11 United States position that it does not matter if the nurse --
12 or if the physician assistant had good judgment as opposed to
13 nurse practitioners who did not, when the physician's assistant
14 was using Dr. Abad's DEA number. That is illegal. A
15 practitioner must use their own DEA number when they are
16 prescribing controlled substances. A physician's assistant can
17 have a DEA number and can have prescriptive authority and can
18 have a collaborative agreement. That is not what was going on
19 here. One of the reasons perhaps is because there's a 72-hour
20 limitation on the amount of controlled substances that a
21 physician's assistant or a nurse practitioner can issue under
22 their own DEA registration.

23 So, regardless of whether the physician's assistant had good
24 judgment or not, and regardless of whether Dr. Abad was
25 supervising the nurse practitioners at any point, it was illegal

1 for him to allow them to use his DEA number.

2 BY THE COURT:

3 Q. Dr. Abad, is that your understanding as well?

4 A. Yes, Your Honor.

5 Q. Now then, one of the things that count one states is that
6 you entered into a conspiracy with others, and are you
7 suggesting that the others who were conspiring to commit these
8 violations of Title 21, United States Code, Section 843(a)(2),
9 were the nurse practitioners, the three perhaps that you've
10 referred to? Are they the individuals that you conspired with?

11 A. Yes, Your Honor.

12 Q. So that they knew that they, with your agreement, could use
13 your registration number, even though you weren't supervising
14 them at the time. Is that correct?

15 A. Yes, Your Honor.

16 Q. Thank you.

17 Now then, turning to paragraph or to count two --

18 MS. SCHWARTZ: Your Honor, may I add something about
19 the United States position with regard to the number --

20 THE COURT: Go ahead.

21 MS. SCHWARTZ: -- of individuals. I believe that the
22 defendant also conspired with Cameron Justice, the owner of
23 Justice Medical Clinic, for his DEA number to be used by the
24 three nurse practitioners and at least one physician's
25 assistant, and I don't believe that Dr. Abad disagrees with

1 that.

2 THE COURT: What's the name of that individual?

3 MS. SCHWARTZ: Cameron Justice who is the owner of the
4 clinic.

5 THE COURT: Do you agree that what Ms. Schwartz has
6 just stated is accurate?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Thank you.

9 BY THE COURT:

10 Q. Now then, with respect to paragraph 2, the scheme to defraud
11 is set forth as having occurred during the same time period, and
12 that, of course, has to do with causing the Medicare program to
13 pay out \$110,959.49 for controlled substances that were
14 ostensibly prescribed by a physician, but which, in fact, were
15 not prescribed by a physician.

16 Let me ask you this. Would that be the same conduct that
17 you've just referred to involving perhaps three nurse
18 practitioners and a single physician's assistant who would have
19 been prescribing, and then Medicare was being billed for the
20 payment of the filling of those prescriptions. Is that correct?

21 A. (Pause.)

22 Q. If that's not correct, just tell me. I was simply trying to
23 simplify the problem, and it may be that it can't be presented
24 that simply.

25 MS. MORAN: As I understand it, Your Honor, that is not

1 correct.

2 THE COURT: All right. Then I'm going to have the
3 doctor tell me what is correct.

4 A. With the health care for the aiding and abetting, when --
5 just like when I enter a contract with the ER group or hospital,
6 I usually sign contracts with the different health insurance
7 providers, whether private or public. This included Medicare
8 with the Justice Medical Clinic. At the same time, I gave them
9 the authority to bill for my services when I give the services
10 directly to the Medicare patients. And I'm understanding from
11 day one that since it is the nurse practitioners who are going
12 to see the patients, then Justice Medical Center should be
13 billing for their services, and Mr. Cameron Justice assured me
14 that this has been their practice --

15 MS. SCHWARTZ: Your Honor, I'm sorry to interrupt, but
16 I think he is talking about a totally different issue than what
17 the court asked about.

18 THE COURT: My question of you --

19 MS. MORAN: I think I need to take --

20 THE COURT: Go ahead and confer.

21 (Pause.)

22 MS. MORAN: Your Honor, you were right the first time.
23 We have -- we have mixed up the issues. What you initially
24 started to describe to the doctor about the prescriptions, that
25 is correct. That's what the 110,000 dollars is for, billing for

1 those prescriptions.

2 Q. Is that correct, doctor?

3 A. Yes, Your Honor.

4 Q. And so, as I suggested might be the case earlier, it is the
5 process here that once those nurse practitioners and the
6 physician assistants had used -- I should say misused, with your
7 knowledge, your number, registration number in order that the
8 prescriptions could be written, in turn, Medicare was billed for
9 those prescriptions; is that right?

10 A. Yes, Your Honor.

11 Q. And Medicare then was in that sense being defrauded of the
12 110,959 dollars that is referred to because that was the amount
13 they paid to defray the costs of those unauthorized
14 prescriptions; is that correct?

15 A. Yes, Your Honor.

16 Q. And so, did you know that that practice and procedure was
17 taking place during this period of January 2008 to March 26,
18 2009?

19 A. Yeah, I should have known about this practice, Your Honor.

20 Q. Well, aside from should have known, did you know about it?

21 MS. MORAN: Yes. May I have a moment, Your Honor.

22 (Pause.)

23 A. Yes, Your Honor. Definitely I knew the process that if a
24 Medicare patient was prescribed medications from that clinic,
25 then definitely Medicare will be paying for those prescription

1 medications.

2 Q. More specifically, is it the case that you did know that
3 that process was taking place, that is, once those drugs were
4 prescribed improperly by the nurse practitioners and the
5 physician's assistant, that Medicare was being billed for the
6 prescriptions?

7 A. Yes, Your Honor.

8 Q. And that was to the extent of 110,959 dollars.

9 A. Yes, Your Honor.

10 Q. And so, is it fair to say then that you knew that Medicare
11 was being defrauded of that money because those prescriptions
12 were improperly written in the first place and you knew it at
13 the time?

14 A. Yes, Your Honor.

15 THE COURT: Let me ask the defendant whether or not he
16 has any further evidence with respect to count two.

17 MS. MORAN: No, Your Honor.

18 THE COURT: And does the government?

19 MS. SCHWARTZ: I would just note, Your Honor, that in
20 addition to aiding and abetting the nurse practitioners and the
21 physician's assistants in the conduct that related in the loss
22 to Medicare, I would submit to the court that -- and I believe
23 that the defendant would agree, that Cameron Justice was
24 involved in this as well as an aider and abettor in this, and
25 the pharmacies and the pharmacists who filled the prescriptions

1 because of the close nature of the relationship between Justice
2 Medical Center and the Sav-Rite pharmacy where all the
3 prescriptions were being sent; so close, in fact, that Sav-Rite
4 opened a new branch pharmacy right next to the clinic to service
5 the clinic. There were employees at the clinic who had
6 relatives who worked at the pharmacy, and everybody knew it was
7 the nurse practitioners generating these prescriptions.

8 So it's the United States position that not only was it the
9 doctor, the nurse practitioners, the physician's assistant, but
10 also Cameron Justice and the pharmacy through its officers,
11 employees, agents, and owners that were aware of this going on,
12 that were all involved in the health care fraud on that count.

13 THE COURT: By that, you are saying that the pharmacy
14 is the one that was filling the bulk of these prescriptions and
15 is the entity to whom Medicare was reimbursing this money that
16 adds to 110,000.

17 MS. SCHWARTZ: That's correct, Your Honor, and the
18 pharmacy filled all the prescriptions, all the controlled
19 substance prescriptions from Justice Medical.

20 THE COURT: Is it correct that, as Ms. Schwartz has
21 just stated and as the court added in the court's colloquy with
22 her, that the pharmacy and the pharmacist received the benefit
23 of these Medicare funds and were aiders and abettors in this
24 misconduct? Just focusing on the pharmacy and the pharmacist
25 now.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. And then finally, was Cameron
3 and Justice -- excuse me, was Cameron Justice also involved in
4 it, finding some benefit to the Justice Medical Clinic
5 apparently if this process was ongoing?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And is there anything further?

8 MS. SCHWARTZ: I would like to add a little bit about
9 what the judge -- what you just said, Your Honor, what was the
10 benefit to Cameron Justice and to Dr. Abad to allow this health
11 care fraud to go on. The Justice Medical Center from the very
12 beginning catered to a very large number of people who were
13 seeking controlled substances, especially hydrocodone and
14 alprazolam in combination, which are commonly used and abused,
15 sold on the streets, especially for the heightened effect that
16 that combination produces. Many people came to Justice Medical
17 Center -- huge numbers of them who came there received those
18 drugs. That was almost, I think it would be fair to say, the
19 bread and butter of the business of Justice Medical Center.

20 So Cameron Justice certainly had an interest in making sure
21 that those prescriptions would keep being provided to the people
22 who wanted to come to his clinic and that they could fill their
23 prescriptions, whether they be Medicare patients, private
24 insurance patients, or whatever type of arrangements they had.

25 Now, in addition, Dr. Abad benefited from the patients

1 receiving their prescriptions and being paid for by Medicare, as
2 they would continue to be patients at the clinic, which would
3 continue to provide him with the certain benefits that he
4 received from the clinic, which included health insurance for
5 his family, the use of a leased vehicle which was I believe
6 about \$100,000 Mercedes, very late model, and some cash payments
7 which totaled \$10,000.

8 THE COURT: Doctor, you heard what Ms. Schwartz last
9 said since she stood once more, and I will ask you whether or
10 not what she said is correct.

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Thank you.

13 And do the parties have any further evidence with respect to
14 establishing the factual basis for the plea to either count in
15 this case?

16 MS. SCHWARTZ: No, Your Honor.

17 THE COURT: Anything further?

18 MS. MORAN: Nothing further, Your Honor.

19 BY THE COURT:

20 Q. I'll ask you then, Dr. Abad. Did you do the acts to which
21 you've pled guilty as more fully set forth in count one?

22 A. Yes, Your Honor.

23 Q. And count two?

24 A. Yes, Your Honor.

25 Q. At the time you did those acts, did you know and understand

1 and intend what you were doing?

2 A. Yes, Your Honor.

3 Q. Are you pleading guilty to each of those two counts then
4 because you are, in fact, guilty of that with which you are
5 charged in them?

6 A. Yes, Your Honor.

7 Q. Do you understand all of the proceedings that have taken
8 place here today?

9 A. Yes, Your Honor.

10 Q. Do you wish to go forward with your pleas of guilty to both
11 counts?

12 A. Yes, Your Honor.

13 THE COURT: The court finds that there is a factual
14 basis for each of these two pleas, and that each plea is entered
15 freely and voluntarily by the defendant, with the full knowledge
16 of the consequences of the plea, including the possible penalty
17 that the court may in this case impose.

18 The court accepts and approves the plea agreement, and finds
19 that that agreement adequately protects the rights of the
20 defendant and is in the interests of justice.

21 And accordingly, Dr. Abad, the court accepts your pleas of
22 guilty, and upon your plea of guilty to those two counts, it's
23 adjudged by the court that you are guilty of the charges
24 contained in count one, and you stand convicted of one violation
25 of Title 21, United States Code, Section 846, and you stand

1 convicted of the charge contained in count two, and you stand
2 convicted of one violation of Title 18, United States Code,
3 Section 1347 and 2.

4 You may be seated.

5 The court will direct a presentence investigation by the
6 probation department, and continues this case for sentencing
7 until May 25, 2010, at 1:30 in the afternoon.

8 Is that a satisfactory date with counsel?

9 MS. SCHWARTZ: It is, Your Honor.

10 MS. MORAN: Yes, Your Honor.

11 THE COURT: Is this the defendant's first appearance?

12 MS. SCHWARTZ: I believe it is.

13 MS. MORAN: Yes.

14 THE COURT: Is there a pretrial services report?

15 MS. MORAN: Yes.

16 (Pause.)

17 THE COURT: Dr. Abad, you moved to Beckley in 1994, did
18 you?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And then in 2003 you came to Charleston.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Let me ask, doctor, have you ever been
23 charged with any offense other than this one?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: And have you ever failed to make a court

1 appearance?

2 THE DEFENDANT: No.

3 THE COURT: Does the government have a recommendation
4 as to bond?

5 MS. SCHWARTZ: Your Honor, the United States believes
6 that it's appropriate for Dr. Abad to have a bond. He has been
7 aware of our investigation since the day we executed search
8 warrants and has been cooperative, has not fled, has tried to
9 provide some cooperation to the United States, and immediately
10 disassociated himself with the Justice Medical Clinic when I
11 asked him to do that. I think all those things should be taken
12 into consideration, Your Honor.

13 THE COURT: Just one moment.

14 Let me ask whether or not the parties would find June 3rd at
15 1:30, instead of the time I gave you a moment ago, as the
16 appropriate sentencing date?

17 MS. SCHWARTZ: That's fine with the United States, Your
18 Honor.

19 MS. MORAN: Yes, Your Honor.

20 THE COURT: Change it, if you will, accordingly to June
21 3 at 1:30.

22 The court, Dr. Abad, is going to fix your bond in the amount
23 of \$10,000 unsecured, and it will be subject to the usual terms
24 and conditions for such a bond; and one of those terms and
25 conditions is that you remain within the judicial district, that

1 is, the Southern District of West Virginia.

2 The court is going to sign an order to that effect, but
3 before it becomes effective, you must read it and sign it
4 yourself, acknowledging that you understand its terms. And then
5 once you've done that, you will be processed by the marshal, and
6 when the marshal is finished, it may be that the probation
7 officer may want a word with you before you leave as well, and
8 then at that point, you can go to the clerk's office with your
9 attorney and enter into bond. And that will need to be brought
10 to me to approve, and as soon as that's done, you will be able
11 to be released.

12 But at the moment, what I wish to inform you of is that I'm
13 going to sign this order that permits you to make bond, and the
14 first thing that has to be done is for you to remain here in the
15 courtroom so that you go over this document; and once you have
16 read it and understood it, you can sign it, acknowledging that
17 you do indeed understand it.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do the parties have anything further?

20 MS. SCHWARTZ: Nothing from the United States, Your
21 Honor.

22 MS. MORAN: Nothing from the defendant, Your Honor.

23 THE COURT: We'll stand continued as indicated. Thank
24 you.

25 (At 3:00 p.m. the hearing was concluded.)

--oOo--

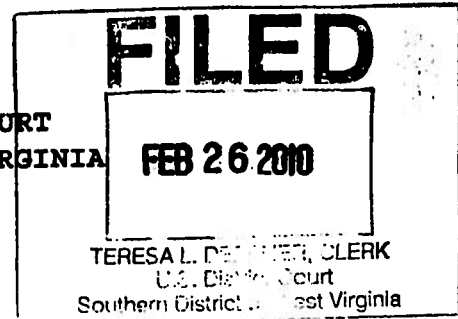
REPORTER'S CERTIFICATE

I, Barbara Steinke, Registered Merit Reporter, do hereby certify that the foregoing proceedings were reduced to writing by me at the time and place therein mentioned, and said proceedings are a true and accurate transcript from my notes. I further certify that I am neither related to any of the parties by blood or marriage, nor do I have any interest in the outcome of the above matter.

March 4, 2010

s/Barbara Steinke

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON



UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:10-00024

AUGUSTO T. ABAD, M.D.

GUILTY PLEA

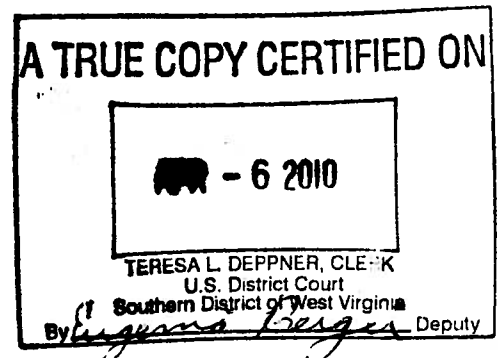
In the presence of Jane C. Moran and W. Thomas Ward,
my counsel, who has fully explained the charges contained in the
information against me and, having received a copy of the infor-
mation from the United States Attorney before being called upon
to plead, I hereby plead GUILTY to the two-count information.

2-26-10
Date

[Signature]
Augusto T. Abad, M.D.

Witness:

[Signature]
Counsel for Defendant
[Signature]



**United States Attorney
Southern District of West Virginia**

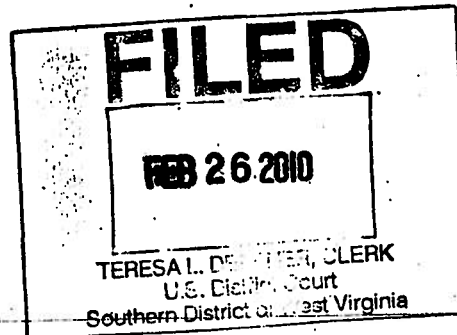
Robert C. Byrd United States Courthouse
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Charleston, WV 25301
FAX: (304) 347-5104

Mailing Address
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Charleston, WV 25326-1713
304-345-2200
1-800-639-8726

January 12, 2010

Jane C. Moran, Esquire
JANE MORAN LAW OFFICE
P. O. Box 221
Williamson, WV 25661

William T. Ward, Esquire
P. O. Box 628
Williamson, WV 25661



Re: United States v. Augusto T. Abad, M.D.

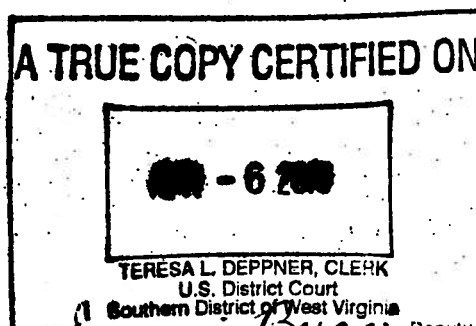
Dear Ms. Moran and Mr. Ward:

This will confirm our conversations with regard to your client, Augusto T. Abad, M.D. (hereinafter "Dr. Abad"). As a result of these conversations, it is agreed by and between the United States and Dr. Abad as follows:

1. **CHARGING AGREEMENT.** Dr. Abad agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a two-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. **RESOLUTION OF CHARGES.** Dr. Abad will plead guilty to violations of 21 U.S.C. § 846 (conspiracy to misuse his Drug Enforcement Administration number to distribute controlled substances) and 18 U.S.C. §§ 1347 and 2 (aiding and abetting health care fraud) as charged in said information.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Dr. Abad will be exposed by virtue of this guilty plea is as follows:



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initials

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William T. Ward, Esquire
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COUNT ONE


- (a) Imprisonment for a period of 4 years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 1 year;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013;
- (e) Pursuant to 21 U.S.C. § 862(a)(1), the Court may deny certain federal benefits to Dr. Abad for a period of 5 years; and
- (f) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663 and 3664.

COUNT TWO

- (a) Imprisonment for a period of 10 years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 3 years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663A and 3664.

TOTAL MAXIMUM

- (a) Imprisonment for a period of 14 years;


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- (b) A fine of \$500,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 3 years;
- (d) A mandatory special assessment of \$200 pursuant to 18 U.S.C. § 3013;
- (e) Pursuant to 21 U.S.C. § 862(a)(1), the Court may deny certain federal benefits to Dr. Abad for a period of 5 years; and
- (f) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663, 3663A and 3664.

4. **LICENSE REVOCATION LICENSE REVOCATION.** Dr. Abad agrees:

- (a) to surrender all of his Drug Enforcement Administration Certificates of Registration at a time and place to be determined by the United States;
- (b) not to oppose revocation of any registration to dispense controlled substances pursuant to 21 U.S.C. § 824(a) and 21 C.F.R. § 1301.45 on the ground that he has been convicted of a felony relating to a controlled substance and committed such acts as would render his registration under 21 U.S.C. § 823 inconsistent with the public interest as determined under that section; and
- (c) not to apply for re-registration until on or after the termination of any period of imprisonment and/or supervision which may be imposed by the Court.

5. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Dr. Abad will tender a check or money order to the Clerk of the United States District Court for \$200, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the


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Clerk will be applied toward the special assessment imposed by the Court at sentencing. Dr. Abad will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Dr. Abad fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Dr. Abad.

6. ~~RESTITUTION.~~ Dr. Abad agrees that he owes restitution in the amount of \$110,959.45 and agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Dr. Abad further agrees as follows:

- (a) Dr. Abad agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.
- (b) Dr. Abad will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.
- (c) Dr. Abad agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest.
- (d) Dr. Abad agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives


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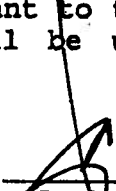
his right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.

- (e) Dr. Abad agrees not to appeal any order of the District Court imposing restitution unless the amount of restitution imposed exceeds the amount set forth in this plea agreement. However, nothing in this provision is intended to preclude the Court from ordering Dr. Abad to pay a greater or lesser sum of restitution in accordance with law.

7. **PAYMENT OF MONETARY PENALTIES.** Dr. Abad agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Dr. Abad further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

8. **COOPERATION.** Dr. Abad will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In addition, Dr. Abad agrees to be named as an unindicted co-conspirator and unindicted aider and abettor in appropriate subsequent additional charges, including additional indictments. In complying with this provision, Dr. Abad may have counsel present except when appearing before a grand jury.

9. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Dr. Abad, nothing contained in any statement or testimony provided by Dr. Abad pursuant to this agreement, or any evidence developed therefrom, will be used


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against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

10. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Dr. Abad for any violations of federal or state laws. The United States reserves the right to prosecute Dr. Abad for perjury or false statement if such a situation should occur pursuant to this agreement.

11. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Dr. Abad stipulate and agree that the facts comprising the offenses of conviction and relevant conduct include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."

Dr. Abad agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Dr. Abad, and he is subsequently tried on any of the charges in the information, the United States may use and introduce the "Stipulation of Facts" in the United States case-in-chief, in cross-examination of Dr. Abad or of any of his witnesses, or in rebuttal of any testimony introduced by Dr. Abad or on his behalf. Dr. Abad knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Dr. Abad understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court,


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the parties will not have the right to withdraw from the plea agreement.

12. WAIVER OF APPEAL AND COLLATERAL ATTACK. The parties retain the right to seek appellate review of the District Court's determination of the Sentencing Guideline range, if an objection is properly preserved. Nonetheless, Dr. Abad knowingly and voluntarily waives his right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court on any other ground, so long as that sentence is below or within the Sentencing Guideline range determined by the District Court prior to any departure or variance. Similarly, the United States waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court on any other ground, so long as that sentence is within or above the Sentencing Guideline range determined by the District Court prior to any departure or variance.

Dr. Abad also knowingly and voluntarily waives the right to challenge his guilty plea and his convictions resulting from this plea agreement, and any sentence imposed for the convictions, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. WAIVER OF FOIA AND PRIVACY RIGHT. Dr. Abad knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. FINAL DISPOSITION. The matter of sentencing is within the sole discretion of the Court. The United States has made no


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representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Dr. Abad;
- (f) Advise the Court concerning the nature and extent of Dr. Abad's cooperation; and
- (g) Address the Court regarding the issue of Dr. Abad's acceptance of responsibility.

15. **VOIDING OF AGREEMENT.** If either the United States or Dr. Abad violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

16. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Dr. Abad in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Dr. Abad in any Court other than the United States District Court for the Southern District of West Virginia.

A handwritten signature, likely of Jane C. Moran, is located at the bottom right of the page. It consists of a stylized, cursive script.

Jane C. Moran, Esquire
William T. Ward, Esquire
January 12, 2010
Page 9

Re: Augusto T. Abad, M.D.

Acknowledged and agreed to on behalf of the United States:


CHARLES T. MILLER
United States Attorney

By:



MONICA K. SCHWARTZ
Assistant United States Attorney

MKS/fgc

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this 9-page agreement that I have read and carefully discussed every part of it with my attorneys, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorneys have advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorneys in this matter.


AUGUSTO T. ABAD
Defendant

1/19/2010
Date Signed


JANE C. MORAN
Counsel for Defendant

1-21-10
Date Signed


WILLIAM T. WARD
Counsel for Defendant

1/19/2010
Date Signed

Defendant's
initials

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

UNITED STATES OF AMERICA

v.

CRIMINAL NO.

AUGUSTO T. ABAD, M.D.

**21 U.S.C. § 846
18 U.S.C. § 1347
18 U.S.C. § 2**

I N F O R M A T I O N

The United States Attorney Charges:

COUNT ONE

(Conspiracy To Misuse DEA Number)

From in or about January 2008, and continuing to on or about March 26, 2009, at or near Kermit, Mingo County, West Virginia, and within the Southern District of West Virginia, and elsewhere, defendant AUGUSTO T. ABAD, M.D. and other individuals known to the United States Attorney, knowingly conspired to commit offenses in violation of 21 U.S.C. § 843(a)(2), that is, knowingly and intentionally causing others to use a registration number which was issued to him, in the course of the distribution of, and for the purpose of acquiring and obtaining hydrocodone, a Schedule III controlled substance, and alprazolam and phentermine, Schedule IV controlled substances.

In violation of Title 21, United States Code, Section 846.

"PLEA AGREEMENT EXHIBIT A"

COUNT TWO

(Health Care Fraud/Aiding And Abetting)

Introduction

At all relevant times:

1. Defendant AUGUSTO T. ABAD, M.D., was a medical doctor licensed in West Virginia and Kentucky and associated with a medical clinic (hereinafter "the clinic"), located between Kermit and Crum, West Virginia.

2. All controlled substance prescriptions issued through the clinic were transmitted to and filled at a pharmacy located at or near Kermit, Mingo County, West Virginia, and later at a related pharmacy located immediately adjacent to the clinic.

3. Defendant resided in Kanawha County, West Virginia, where he, at times, reviewed electronic medical records and photographs of JMC patients, in his role as the "supervisor" of certain nurse practitioners (N.P.s) and physicians assistants (P.A.s) at the clinic.

4. Medicare is a program established and fully funded by the United States to provide health insurance to the elderly, severely disabled, or persons with specific chronic medical conditions. Medicare is administered by the Department of Health and Human Services (HHS) and private companies under contract with HHS.

The Scheme to Defraud

5. From in or about January, 2008, and continuing to on or about March 26, 2009, at or near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, and

elsewhere, defendant AUGUSTO T. ABAD, M.D., aided and abetted by others known to the United States Attorney, did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program, that is, the Medicare program, which scheme and artifice involved misrepresentation and concealment of material fact, and to obtain, by means of materially false and fraudulent pretenses and representations, money owned by and under the control and custody of the Medicare program, in connection with the payment for medical services and prescription medication.

Manner and Means of
Execution of the Scheme

6. It was part of the scheme that defendant AUGUSTO T. ABAD, M.D. allowed nurse practitioners (N.P.S.) and others who were employed by, or associated with, the clinic to use his Drug Enforcement Administration (DEA) registration number to issue controlled substance prescriptions for, and to acquire and obtain hydrocodone, a schedule III controlled substance, and alprazolam and phentermine, schedule IV controlled substances, as well as other controlled substances.

7. It was further part of the scheme that N.P.s who were employed by the clinic personally met with and provided face-to-face examinations and evaluations of patients.

8. It was further part of the scheme that defendant normally did not meet with or perform face-to-face examinations and evaluations of patients at the clinic.

9. It was further part of the scheme that employees of the clinic, including the N.P.S., would and did issue controlled substance prescriptions using the name and DEA registration number of Augusto T. Abad, M.D., thereby, falsely indicating that controlled substances had been prescribed by defendant to Medicare beneficiaries, thereby facilitating payments by Medicare.

10. As a result of the fraudulent scheme, defendant AUGUSTO T. ABAD, M.D., aided and abetted by others known to the United States Attorney, would and did cause the Medicare program to pay \$110,959.49 for controlled substances ostensibly prescribed by a physician, which were not, in fact, prescribed by a physician.

In violation of Title 18, United States Code, Sections 1347 and 2.

UNITED STATES OF AMERICA

CHARLES T. MILLER
United States Attorney

By:

MONICA K. SCHWARTZ
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. _____


AUGUSTO T. ABAD, M.D.

STIPULATION OF FACTS

The United States and Augusto T. Abad, M.D. (defendant) stipulate and agree that the facts comprising the offenses of conviction in the information to be filed against him in the Southern District of West Virginia, and the relevant conduct for those offenses, include the following:

1. At all relevant times, defendant was a duly licensed medical doctor with his principal practice located in South Williamson, Kentucky.
2. Prior to January 2008, defendant was asked to associate with the Justice Medical Clinic (JMC), located between Kermit and Crum, West Virginia. Defendant was aware that JMC had been in operation for some time under the leadership and supervision of other persons, including other physicians.
3. From the time he was approached to join JMC, to at least March 26, 2009, defendant continued in the full time practice of medicine in South Williamson, Kentucky.
4. Defendant told police in December of 2008, that (a) he originally indicated that he did not want to associate with JMC because he was an internist and not a pain specialist, and (b) that he agreed to assist JMC when he was persuaded that his service was needed by the community.

"PLEA AGREEMENT EXHIBIT B"


Defendant's
initials

5. Defendant began his association with JMC in January of 2008 and it continued until March 26, 2009.
6. As compensation, JMC provided defendant with health insurance for himself and his family (consisting of his wife and children), the use of a leased 2008 Mercedes and \$10,000.00.
7. Defendant agreed to "supervise" nurse practitioners (NPs) who were employed at JMC, and who actually provided services to JMC patients.
8. Defendant's role was to be as follows:
 - a. Defendant was to review and co-sign JMC's computerized patient charts from his home in Charleston, West Virginia, after the patients were seen by the NPs.
 - b. Defendant told police that he relied on photos to become familiar with patients as well as medical histories provided by the NPs.
 - c. If the NPs had a question, defendant was to be available by cell phone or pager.
9. Defendant had "collaborative agreements" approved and on file with the West Virginia Board of Nursing, with some NPs relative to his association with JMC.
10. Defendant also had an agreement with a Physician's Assistant (PA), relative to JMC, on file with the West Virginia Board of Medicine.
11. Defendant told police that he instructed the NPs as follows:
 - Never prescribe narcotics during a patient's first visit unless it is a clear cut case with a documented history.
 - Obtain MRIs, X-rays and physician reports prior to prescribing narcotics.

Defendant's
Initials

12. Mid-level providers such as NPs and PAs are non-physician medical professionals who provide patient care under the supervision of a physician. The scope of a mid-level provider's practice is governed by specific federal and state laws, and by policies promulgated by government and private insurance programs. In general, mid-level providers can examine, diagnose and provide certain treatments, including the prescription of certain, limited amounts of controlled substances, e.g., a 72 hour supply of hydrocodone, without refills.
13. A physician or mid-level provider who wishes to distribute controlled substance as part of his or her professional practice must do so pursuant to a DEA registration (21 U.S.C. § 822; 21 C.F.R. 1301.11).
14. At all relevant times, defendant possessed a DEA registration with a location of 2306 Hospital Drive, Suite 202C, South Williamson, Kentucky. All of defendant's controlled substance prescriptions at issue herein, were issued through JMC, in West Virginia, under defendant's Kentucky DEA number. Defendant obtained a DEA number for the JMC/WV location on or about October 31, 2008. However, no controlled substance prescriptions have been identified using defendant's West Virginia DEA number. Defendant was required to have a separate West Virginia DEA number for the controlled substance prescriptions issued in his name through JMC. 21 U.S.C. § 822; 21 C.F.R. 1301.12(a).
15. Defendant agreed that the NPs could use his Drug Enforcement Administration (DEA) registration number to issue controlled substance prescriptions.
16. JMC patients were routinely seen by the mid-level providers who caused prescriptions for controlled substances including hydrocodone and alprazolam to be issued under defendant's name and his Kentucky Drug Enforcement Administration (DEA) registration number, in quantities intended to cover a 30-day supply and exceeding the amounts that mid-level providers are authorized to prescribe in their own names.


Defendant's
Initials

17. Patients were generally required to make monthly visits to JMC.
18. A valid controlled substance prescription must be issued by a practitioner who is authorized by the jurisdiction in which he is licensed to practice his profession and either registered or exempted from registration by the DEA (C.F.R. Section 1306.03(a)(1) and (2)).
19. A valid controlled substance prescription must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice (21 C.F.R. 1306.04(a)).
20. Mid-level providers at JMC (NPs and PAs) who had both prescriptive authority and a DEA registration did not prescribe controlled substances using their assigned DEA number as required. These mid-level providers used the DEA number of defendant which is not governed by conditions that a mid-level provider must follow while prescribing. Specifically, PAs and NPs are limited to a seventy-two (72) hour supply, without refills, for all Schedule III controlled substances.
21. On or about November 10, 2008, prescriptions for 90 hydrocodone and 90 alprazolam were issued through JMC in defendant's name and DEA number after a patient's ("S.B.") first visit to JMC.
22. On November 12, 2008, "S.B." was found dead. Only 14 of the hydrocodone and 7 of the alprazolam prescribed under defendant's name and DEA number were found. Also found were several straws containing white powder residue. The West Virginia medical examiner has determined that "S.B." died of a heart attack and has not specifically reported that the drugs provided under defendant's name caused the death.
23. One of the NPs at JMC, who was ostensibly supervised by defendant, saw "S.B." and caused the prescriptions to be issued, in defendant's name and DEA number.


Defendant's
Initials


24. Defendant and this NP clashed after the death of "S.B." Later, defendant entered into a written collaborative agreement with the NP which was never approved by the West Virginia Board of Nursing (WVBON). Collaborative agreements are normally submitted to the WVBON for approval. Pursuant to the collaborative agreement, the NP was not allowed to initiate administration of controlled substances or increase existing dosages. Defendant continued to allow the N.P. to use his name and DEA number to issue controlled substance prescriptions.
25. Medicare is a program established and fully funded by the United States to provide health insurance to the elderly, severely disabled, or persons with specific chronic medical conditions. Medicare is administered by the Department of Health and Human Services (HHS) and private companies under contract with HHS.
26. Defendant allowed JMC to use his Medicare provider number for billing purposes.
27. Defendant was unable to keep up with his review of the JMC patient charts because of his practice in Kentucky.
28. Defendant did not thoroughly review the JMC patient charts and, sometimes, co-signed the charts without reviewing them at all.
29. On at least three occasions, defendant asked a company that performed billing services for JMC to co-sign a bulk number of progress notes in JMC patient charts because the large volume of chart notes pending review by defendant had caused him to be locked out of the computerized billing system.
30. During defendant's tenure at JMC, the patient charts generally indicated that he was a "provider" of medical services although patients were actually not seen by defendant, and the NPs were the actual "providers" of patient care. The charts also generally indicated that NPs were "providers."


Defendant's
Initials

31. During defendant's tenure at JMC, the NPs routinely prescribed 30-day supplies of controlled substances under defendant's name and DEA number.
32. During defendant's tenure at JMC, the defendant received electronic notifications of prescriptions for controlled substances written on his behalf by the JMC mid-level providers, including the NPs.
33. Defendant either knew or should have known that it was improper and illegal for the JMC NPs to issue controlled substance prescriptions for more than 72 hours using his name and DEA number.
34. Defendant knew, or should have known, that the controlled substance prescriptions issued through JMC under his name and DEA number included:
 - (a) hydrocodone, a Schedule III controlled substance which is a favorite of drug seekers and is commonly abused, traded, or sold "on the streets" for a profit;
 - (b) alprazolam, also known as "Xanax," a Schedule IV anti-anxiety medication which is often requested in combination with hydrocodone by drug seekers for the heightened effect the combination produces and is commonly abused, traded, or sold "on the streets" for a profit; and
 - (c) phentermine, a Schedule IV controlled substance often used as an appetite suppressant to treat obesity, which can be habit forming and is a commonly abused drug.



Defendant's
Initials

36. Defendant knew, or should have known that JMC catered to a large number of individuals who sought controlled substances, especially pain pills/hydrocodone. Defendant told police that when he began his association with JMC he attempted to establish controls to limit the distribution of pain killers.
37. JMC transmitted all of its controlled substance prescriptions to a Pharmacy in Kermit, Mingo County, West Virginia and later to a new branch of that pharmacy located immediately adjacent to JMC.
38. Defendant was never personally contacted by any pharmacist regarding the prescriptions issued through JMC under his name and DEA number, to verify his relationship with JMC and/or regarding any specific prescription.
39. Defendant knew that a significant percentage of JMC's patients were on Medicare and that they normally paid for their prescription medications using Medicare.
40. It was improper, illegal and outside the normal course of professional medical practice for defendant to allow others to utilize his DEA registration number to issue controlled substance prescriptions.
41. Defendant knew that medicare would not pay for prescriptions that were improper, illegal and/or issued outside the normal course of medical practice.
42. Between January 2008 and March 26, 1009, Medicare paid the pharmacies that filled the improper and illegal prescriptions issued by others including mid-levels, associated with JMC under defendant's Kentucky DEA registration number, \$110,959.45, thereby defrauding a government health care program.



Defendant's
Initials

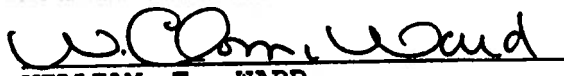
43. This Stipulation of Facts does not contain each and every fact known to defendant and to the United States concerning defendant's involvement and the involvement of others in the charges set forth in the information.


AUGUSTO T. ABAD, M.D. Defendant

Date 1/19/2010


JANE C. MORAN
Counsel for Defendant

Date 1-22-10


WILLIAM T. WARD
Counsel for Defendant

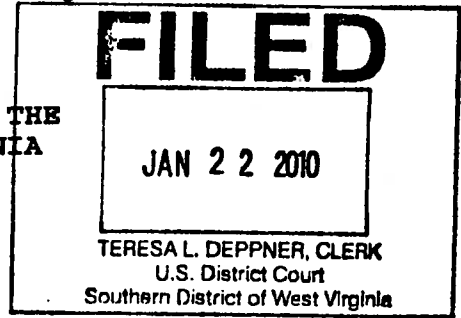
Date 1/19/2010


MONICA K. SCHWARTZ
Assistant United States Attorney

Date 2/26/10

Defendant's
Initials

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON



UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:10-00024

21 U.S.C. § 846
18 U.S.C. § 1347
18 U.S.C. § 2

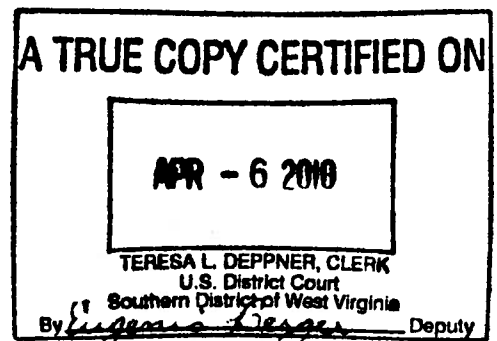
AUGUSTO T. ABAD, M.D.

I N F O R M A T I O N

The United States Attorney Charges:

COUNT ONE

(Conspiracy To Misuse DEA Number)



From in or about January 2008, and continuing to on or about March 26, 2009, at or near Kermit, Mingo County, West Virginia, and within the Southern District of West Virginia, and elsewhere, defendant AUGUSTO T. ABAD, M.D. and other individuals known to the United States Attorney, knowingly conspired to commit offenses in violation of 21 U.S.C. § 843(a)(2), that is, knowingly and intentionally causing others to use a registration number which was issued to him, in the course of the distribution of, and for the purpose of acquiring and obtaining hydrocodone, a Schedule III controlled substance, and alprazolam and phentermine, Schedule IV controlled substances.

In violation of Title 21, United States Code, Section 846.

COUNT TWO

(Health Care Fraud/Aiding And Abetting)

Introduction

At all relevant times:

1. Defendant AUGUSTO T. ABAD, M.D., was a medical doctor licensed in West Virginia and Kentucky and associated with a medical clinic (hereinafter "the clinic"), located between Kermit and Crum, West Virginia.

2. All controlled substance prescriptions issued through the clinic were transmitted to and filled at a pharmacy located at or near Kermit, Mingo County, West Virginia, and later at a related pharmacy located immediately adjacent to the clinic.

3. Defendant resided in Kanawha County, West Virginia, where he, at times, reviewed electronic medical records and photographs of JMC patients, in his role as the "supervisor" of certain nurse practitioners (N.P.s) and physicians assistants (P.A.s) at the clinic.

4. Medicare is a program established and fully funded by the United States to provide health insurance to the elderly, severely disabled, or persons with specific chronic medical conditions. Medicare is administered by the Department of Health and Human Services (HHS) and private companies under contract with HHS.

The Scheme to Defraud

5. From in or about January, 2008, and continuing to on or about March 26, 2009, at or near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, and

elsewhere, defendant AUGUSTO T. ABAD, M.D., aided and abetted by others known to the United States Attorney, did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program, that is, the Medicare program, which scheme and artifice involved misrepresentation and concealment of material fact, and to obtain, by means of materially false and fraudulent pretenses and representations, money owned by and under the control and custody of the Medicare program, in connection with the payment for medical services and prescription medication.

Manner and Means of
Execution of the Scheme

6. It was part of the scheme that defendant AUGUSTO T. ABAD, M.D. allowed nurse practitioners (N.P.S.) and others who were employed by, or associated with, the clinic to use his Drug Enforcement Administration (DEA) registration number to issue controlled substance prescriptions for, and to acquire and obtain hydrocodone, a schedule III controlled substance, and alprazolam and phentermine, schedule IV controlled substances, as well as other controlled substances.

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10. As a result of the fraudulent scheme, defendant AUGUSTO T. ABAD, M.D., aided and abetted by others known to the United States Attorney, would and did cause the Medicare program to pay \$110,959.49 for controlled substances ostensibly prescribed by a physician, which were not, in fact, prescribed by a physician.

In violation of Title 18, United States Code, Sections 1347 and 2.

UNITED STATES OF AMERICA

CHARLES T. MILLER
United States Attorney

By:


MONICA K. SCHWARTZ
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

A TRUE COPY CERTIFIED ON

~~200~~ - 6 2010

TERESA L. DEPPNER, CLERK

U.S. District Court

Southern District of West Virginia

By Eugenia Berger Deputy

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:10-CR-00024

AUGUSTO T. ABAD, M.D.

MOTION OF THE UNITED STATES TO
SCHEDULE GUILTY PLEA HEARING

Comes now the United States of America, by Monica K. Schwartz,
Assistant United States Attorney for the Southern District of West
Virginia, and respectfully requests the court to set a date, time,
and location for a guilty plea hearing to be held with regard to
the above-styled case.

Respectfully submitted,

CHARLES T. MILLER
United States Attorney

By: S/Monica K. Schwartz
MONICA K. SCHWARTZ Bar Number: 4938
Assistant U.S. Attorney
P.O. Box 1713
Charleston, WV 25326
Telephone: (304) 345-2200
Fax: (304) 347-5104
E-mail: monica.schwartz@usdoj.gov

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "Motion of the United States to Schedule Guilty Plea Hearing" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing in addition to emailing a true copy this the 22nd day of January 2010, to:

Jane Moran, Esquire
P.O. Box 221
Williamson, WV 25661
Janemoran3@hotmail.com

S/Monica K. Schwartz
MONICA K. SCHWARTZ Bar Number: 4938
Assistant U.S. Attorney
P.O. Box 1713
Charleston, WV 25326
Telephone: (304) 345-2200
Fax: (304) 347-5104
E-mail: monica.schwartz@usdoj.gov

CERTIFICATE OF SERVICE

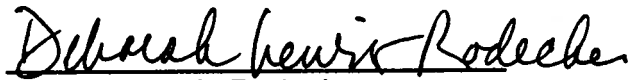
I, Deborah Lewis Rodecker, General Counsel for the West Virginia Board of Medicine, do hereby certify that I have served the foregoing "Order of Revocation of License to Practice Medicine and Surgery" by depositing copies of the same in the United States mail, postage prepaid, this 13th day of September, 2010, addressed to Dr. Abad by certified mail, and his counsel of record, as follows:

Augusto Tenmatay Abad, M.D.
306 Hospital Drive
Suite 202C
South Williamson, Kentucky 41503

Augusto Tenmatay Abad, M.D.
2001 Woodside Circle
Charleston, WV 25314

Jane C. Moran, Esq.
P.O. Box 221
Williamson, WV 25661

W. Thomas Ward, Esq.
P.O. Box 628
Williamson, WV 25661



Deborah Lewis Rodecker
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Deborah.Lewis.Rodecker@wv.gov